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January 10, 2001

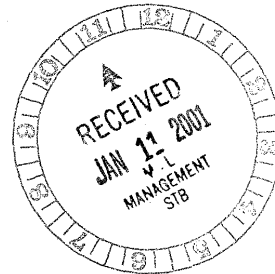
**VIA FEDERAL EXPRESS**

Mr. Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W., Room 700  
Washington, DC 20006

**ENTERED**  
**Office of the Secretary**

**JAN 11 2001**

**Part of**  
**Public Record**



Re: **Ex Parte No. 582 (Sub-No. 1)**  
**Major Rail Consolidation Procedures**

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are an original and twenty-five copies of the **Rebuttal Comments of Wisconsin Central System**, dated January 10, 2001. A 3.5-inch computer diskette containing the text of the comments in WordPerfect 7.0 format also is enclosed.

I have included an extra copy of this transmittal letter and of the rebuttal comments, and would request that you date-stamp those items to show receipt of this filing and return them to me in the provided envelope.

Should any questions arise regarding this filing, please feel free to contact me. Thank you for your assistance on this matter.

Respectfully submitted,

Thomas J. Litwiler  
Attorney for Wisconsin Central System

TJL:tl

Enclosures

cc: Parties of Record

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BEFORE THE  
SURFACE TRANSPORTATION BOARD

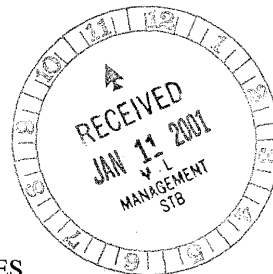
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EX PARTE NO. 582 (SUB-NO. 1)

MAJOR RAIL CONSOLIDATION PROCEDURES



**REBUTTAL COMMENTS OF  
WISCONSIN CENTRAL SYSTEM**

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LTD., FOX VALLEY & WESTERN LTD.,  
SAULT STE. MARIE BRIDGE COMPANY,  
WISCONSIN CHICAGO LINK LTD. AND  
ALGOMA CENTRAL RAILWAY, INC.**

Dated: January 10, 2001

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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EX PARTE NO. 582 (SUB-NO. 1)

MAJOR RAIL CONSOLIDATION PROCEDURES

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**REBUTTAL COMMENTS OF  
WISCONSIN CENTRAL SYSTEM**

Pursuant to the notice of proposed rulemaking served on October 3, 2000, Wisconsin Central System ("WC")<sup>1</sup> hereby submits these rebuttal comments regarding the Board's proposed revisions to its "major" rail consolidation procedures. 49 C.F.R. § 1180, Subpart A.

**Classification of Carriers**

Union Pacific Railroad Company ("UP") now proposes, in its reply comments, that "for purposes of applying the merger rules, the Board should uniformly apply its financial classifications of carriers by combining affiliated carriers only to the extent they integrate their services to shippers." UP Reply at 36. According to UP, this is a "solution" to the "confusion" engendered by Ex Parte No. 634, Consolidated Railroad Reporting (STB served September 25, 2000). Despite its purported concerns, UP has not participated in Ex Parte No. 634,<sup>2</sup> and made no mention of this subject in its opening comments -- which were filed nearly two months after the Ex Parte No. 634 proceeding was initiated. We note that, while now proposing a different

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<sup>1</sup> WC consists of Wisconsin Central Ltd., Fox Valley & Western Ltd., Sault Ste. Marie Bridge Company, Wisconsin Chicago Link Ltd. and Algoma Central Railway, Inc.

<sup>2</sup> Comments were due on November 27, 2000 and were filed by no fewer than twenty-two parties.

application of the railroad classification rules in the merger context in order to suit UP's own interests, UP in quite literally the next paragraph of its reply comments criticizes The Kansas City Southern Railway Company for assertedly doing exactly the same thing. UP Reply at 37.

Obviously, this proceeding on rail consolidation regulations is the inappropriate mechanism -- particularly at this late date -- for considering changes to the Board's carrier classification regulations. UP's arguments do support WC's request to initiate a rulemaking in Ex Parte No. 584, Wisconsin Central Ltd. -- Petition for Rulemaking -- Classification of Carriers (petition filed November 15, 2000), and UP could make its case for suggested classification revisions there.

It seems more likely, however, that UP is simply attempting to skirt the existing Congressional scheme and drag transactions involving groups of affiliated Class II and Class III rail carriers into the "major" category -- and thus within the scope of the rules proposed herein. Aside from its inconsistency with governing statutory provisions, that effort is neither rational nor realistic. While WC appreciates UP's characterization of WC as a "potent competitor," UP Reply at 37, there are some real differences. UP is twenty-nine times the size of WC. A UP acquisition of WC would increase UP's size by 3 ½ percent -- presumably less than UP's hoped-for internal growth in any given year.<sup>3</sup> These are simply not the types of transactions that the Board or the parties have had in mind when designing the new "major" merger rules. They entail none of the vast transcontinental and downstream consequences that commenters fear from transactions among the remaining "Big Six," and few if any of the competitive and service problems that the new merger rules are meant to address. See WC Opening Comments at 8-10.

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<sup>3</sup> Phrased a little differently, if UP was a six-foot tall man, the WC standing next to it would be precisely two-and-a-half inches high.

By imposing obstacles to future rail transactions of a plainly regional nature, UP's proposed rule would simply accommodate its private interest in maintaining the status quo until it deems itself ready to face the increased intramodal competition that future rail mergers will bring. That is the wrong reason to adopt a previously unaddressed, generally-applicable agency rule. UP's tardy proposal should be rejected out of hand.

#### **Neutral Switching and Terminal Carriers**

Canadian National Railway Company ("CN") opposes WC's proposal for partial divestment or other remedies where a proposed major transaction would further concentrate ownership of a neutral terminal railroad. CN Reply at 6. We disagree with the notion that a concentration of ownership, while short of STB-regulated "control," cannot nonetheless reduce the neutrality of a local terminal or switching carrier. A terminal railroad owned by (say) three large, Class I carriers may be significantly more likely to favor the needs of that somewhat monolithic constituency, to the detriment of others, than a terminal railroad owned by eight line-haul carriers of varying sizes.

On the other hand, we agree (as WC has argued elsewhere in this proceeding) that Board-imposed remedies need to be tied to a specific showing of harm. WC recommends that the Board maintain a vigilant policy of assuring the continued neutrality of critical terminal and switching carriers, and taking appropriate action where a proposed merger threatens that neutrality. See WC Opening Comments at 5 (explaining that "effective access to neutral switching and interchange facilities in major terminal areas is an absolute prerequisite if the smaller railroads which comprise the feeder system for the national rail industry are to survive and prosper.").

We note that CN has proposed a workshop on transcontinental mergers -- the setting that would raise the terminal carrier neutrality question most directly.<sup>4</sup> CN Reply at 14-15 and Appendix. If such a workshop or similar event were to occur, the continued viability and effectiveness of neutral terminal and switching carriers at the nation's major interchange locations should be explored carefully.

WHEREFORE, WC respectfully submits these rebuttal comments on the Board's proposed regulations governing major rail consolidation transactions.

Respectfully submitted,

By: 

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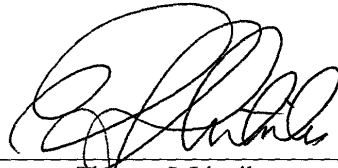
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<sup>4</sup> If the remaining "Big Six" rail carriers merged into two transcontinental systems, those two entities would own Chicago's "independent" terminal and switching railroads (The Belt Railway Company of Chicago and Indiana Harbor Belt Railroad Company) in their entirety.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 10<sup>th</sup> day of January, 2001, a copy of the foregoing **Rebuttal Comments of Wisconsin Central System** was served by first-class mail, postage prepaid, upon all parties of record in this proceeding, as identified on the service list issued by the Surface Transportation Board on April 28, 2000 and revised on May 10, 2000, May 12, 2000 and November 8, 2000.



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Thomas J. Litwiler